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SUPERIOR COURT OF CALIFORNIA

SAN FRANCISCO COUNTY

HONORABLE ETHAN P. SCHULMAN, JUDGE

DEPARTMENT 304

REPORTED REMOTELY VIA ZOOM

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UBER RIDESHARE CASES [JCCP )  
COORDINATED PROCEEDINGS] )  
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CASE NO. CJC-21-005188

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

MAY 17, 2024

REMOTE ZOOM APPEARANCES

**A P P E A R A N C E S:**

FOR THE PLAINTIFFS: BRIAN ABRAMSON, ESQ.  
WILLIAMS HART AND BOUNDAS

FOR THE DEFENDANTS: JESSICA PHILLIPS, ESQ.  
JACQUELINE RUBIN, ESQ.  
PAUL, WEISS

MICHAEL SHORTNACY, ESQ.  
PATRICK OOT, ESQ.  
SHOOK, HARDY AND BACON

COURT REPORTER: AMY GOODING, CSR  
CERTIFICATE NO. CSR 13386

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1 SAN JOSE, CALIFORNIA

MAY 17, 2024

2 **PROCEEDINGS**

3  
4 THE COURT: Good morning, everyone. I think this  
5 is the first time we've met entirely remotely. I see all  
6 your faces on the screen. I suppose I should ask for  
7 purposes of this informal discovery conference to have  
8 counsel who expect to address the Court state your  
9 appearances for the record, please.

10 MR. ABRAMSON: Good morning, Judge Schulman.  
11 Brian Abramson with Williams Hart and Boundas for the  
12 Plaintiffs.

13 MS. PHILLIPS: Good morning, your Honor. This is  
14 Jessica Phillips from Paul Weiss on behalf of the Uber  
15 Defendants. With me is my partner, Jackie Rubin, who will  
16 also be addressing the Court.

17 THE COURT: All right, good. I'd like to hear  
18 some new voices as well.

19 Let's see if I can start with something before we  
20 get to the subject of the informal discovery conference.  
21 Let me start with something that we can all agree on, I  
22 hope. I have just received in my email this morning a copy  
23 of Magistrate Judge Cisneros's order on the ESI protocol in  
24 the federal cases. As I understand it, the parties agreed  
25 that substantially that order will govern in this case, and  
26 I've been given a proposed order to be entered in this case  
27 that I assume effectively, word for word, copies Magistrate  
28 Judge Cisneros's order. Is that what this is? If so, does

1 everybody agree that I should enter it as an ESI order in  
2 this case?

3 MR. ABRAMSON: So, to your first point, it does  
4 not match Judge Cisneros's order word for word because there  
5 were some issues that were specific to the MDL. We made  
6 those modifications with Uber's counsel. I'll let Uber  
7 speak for themselves, but I believe it is ready to be  
8 entered by the Court.

9 THE COURT: Great. Ms. Phillips?

10 MS. PHILLIPS: Thank you, your Honor.

11 I'll actually kick this one to my colleague, Mr.  
12 Shortnacy.

13 MR. SHORTNACY: Michael Shortnacy with Shook,  
14 Hardy and Bacon for Uber. That's correct. I agree with Mr.  
15 Abramson. I think the parties had to put their heads  
16 together on a couple of issues that were unique to the MDL  
17 or maybe switching out federal rules with the California  
18 Code and so on and so forth, but I understand the agreement  
19 has been finalized and submitted. We are in agreement, your  
20 Honor.

21 THE COURT: Thank you. I mean, obviously, I  
22 notice references, for example, to the Federal Rules of  
23 Civil Procedure which don't apply in my courtroom. I  
24 understand there may have been other minor changes.

25 That order will be submitted today. Thank you for  
26 submitting it.

27 Let's move on to more contested issues. There are  
28 two issues that are the subject of the IDC, although there

1 are clearly several others bubbling just below the surface.  
2 But let me try and address the issues in the order that they  
3 have been raised.

4 The first has to do with Uber's request to take  
5 third party witness depositions during the current discovery  
6 period, i.e. the discovery period leading up to the Court's  
7 scheduled October 31st, 2024 deadline to set the bellwether  
8 trial order. As I understand it, Uber is seeking to take a  
9 number of such third party depositions during that period  
10 ranging, if I remember correctly, from two to seven in each  
11 one of the cases, the designated cases. Plaintiff's  
12 position is that those third party depositions are not  
13 necessary for Uber to rank the cases for purposes of the  
14 bellwether trial order and that they should be deferred  
15 until after that order is entered.

16 Is that a fairly accurate summary of the two  
17 parties' or the two sides' positions here?

18 MR. ABRAMSON: It is, your Honor.

19 MS. PHILLIPS: Yes, your Honor. I do agree with  
20 that.

21 I will make one small tweak which is that Uber has  
22 prioritized. Of the 18 remaining bellwether cases, Uber has  
23 prioritized four of those and reached out and indicated our  
24 interest in taking third party depositions in certain cases.  
25 You are correct in the four cases we identified, the number  
26 of third party depositions we are seeking to take in those  
27 cases are two to seven.

28 We are also interested in taking third party

1 depositions in the remaining 14 bellwether cases and, you  
2 know, will be -- that number of course will be different in  
3 those cases because it's dependent, of course, of who the  
4 Plaintiff herself has identified as having that relevant  
5 information.

6 THE COURT: What is the significance of Uber  
7 having prioritized, as you put it, four of the remaining 18  
8 cases? What does that mean?

9 MS. PHILLIPS: Sure. I think it is a way for us  
10 to begin pushing forward these third party depositions. We  
11 had to start somewhere. Internally, we happen to have  
12 prioritized these four cases. Within these four cases,  
13 these particular third party fact witnesses. As I said, we  
14 needed to start somewhere, and that's where we started.

15 THE COURT: What you're telling me, though, is  
16 that's where the dispute has arisen, but the dispute is a  
17 larger one because Uber's position is that it ought to be  
18 able to take third party depositions in all 18 of the cases  
19 during the current period.

20 MS. PHILLIPS: That's correct.

21 THE COURT: Do you have an estimate at this point  
22 as to the number of third party percipient witnesses whose  
23 depositions you would be seeking to take in the remaining 14  
24 cases that are on the board?

25 MS. PHILLIPS: I don't have an estimate. In part,  
26 that's because it's dependent upon the Plaintiffs  
27 identifying some. I've certainly had circumstances where we  
28 have individuals identified in Plaintiff fact sheets and

1 then other individuals identified in answers to written  
2 discovery.

3 I am also familiar with the situation when if we  
4 depose, when we depose the Plaintiffs in these cases,  
5 additional individuals may be identified. Of course, the  
6 number varies in each of those cases. I don't want to give  
7 you an estimate because I don't have a reliable one.

8 THE COURT: But the two to seven, were these  
9 initial for quote unquote priority cases, you've identified  
10 as I understand it principally if not exclusively from the  
11 individuals whose names have been listed by Plaintiffs and  
12 Plaintiffs' fact sheets as having relevant information.

13 MS. PHILLIPS: That's correct. It's exclusively  
14 from both Plaintiff fact sheets and other written discovery.

15 THE COURT: Okay. Well, look. Let's talk about  
16 this issue and let me give you my initial reaction to it and  
17 throw it open for discussion.

18 It seems to me where the parties agree, at least  
19 initially, is that where Uber ought to be focused is on  
20 during this initial period, that is leading up to the  
21 bellwether trial order, is on what information it needs in  
22 order to propose an order, in order basically to assess  
23 these cases and take a position on which ones ought to be  
24 tried first.

25 It also seems to me that some third party  
26 discovery may well be important to that assessment, and I  
27 agree with Uber that nothing in the prior orders that the  
28 Court has entered precludes either party from taking third



1 party discovery during this period.

2 On the other hand, I understand the Plaintiffs'  
3 concern that there's a lot to be done here during this  
4 period of time and that taking a large number of third party  
5 depositions during the period of time when the Plaintiffs  
6 depositions need to be taken, other discovery needs to be  
7 completed, including discovery against Uber, could be very  
8 burdensome and eat up a lot of the limited time that you all  
9 have available to you for discovery.

10 So, let me add one more thing. I'm back to the  
11 first hand again. I am concerned that if too much discovery  
12 here is pushed until after the Court's order comes out,  
13 there's going to be a time crunch between October 31, 2024  
14 when the trial order is to issue and January 15, 2025 when  
15 fact discovery is to close under the order. That's really  
16 only two and a half months, and over the holiday period at  
17 the end of 2024. So, there's a balance, it seems to me, to  
18 be struck here among all of these factors.

19 I don't have a good sense from the letter that you  
20 submitted as to how important some of these third party  
21 witnesses are, in fact, to the assessment and ranking  
22 process that Uber needs to go through. It seems to me in  
23 the abstract -- and this is sort of as far as I can go based  
24 on the limited information you've given me in the letter --  
25 it seems to me, for example --

26 I assume third party deponents here include the  
27 drivers themselves involved in these alleged incidents.

28 Is that right, Ms. Phillips?

1 MS. PHILLIPS: The drivers are not among the third  
2 parties that we have requested to depose, but my  
3 understanding is certainly that the Plaintiffs are  
4 interested in deposing the driver, and we agree with that,  
5 that the drivers should be deposed prior to the ranking  
6 deadline.

7 THE COURT: Right. Having seen a handful of  
8 cross-complaints, in some cases the drivers may no longer be  
9 third parties. They may actually be parties having been  
10 named in cross-complaints in certain cases.

11 Is that correct?

12 MS. PHILLIPS: That's correct.

13 THE COURT: How many of the drivers have been  
14 named and served as parties, whether by Plaintiffs or  
15 whether by Uber in a cross-complaint?

16 Do you know the answer to that?

17 MS. PHILLIPS: I believe the answer to that is we  
18 have filed against drivers and have served, I believe, four.  
19 Those are tentative numbers, and I can confirm those.

20 THE COURT: Mr. Abramson from the Plaintiff's  
21 side, do you know what the numbers are in terms of drivers  
22 who have actually been named and served?

23 MR. ABRAMSON: I don't know the answer to that,  
24 no.

25 THE COURT: Okay. Well, where I'm going with  
26 this -- let me not hide the ball anymore -- is I wonder  
27 whether there's a way to craft a middle course here by  
28 focusing on witnesses whose information really is critical

1 to the assessment and ordering process but narrow it down  
2 from the number of witnesses who perhaps Uber would ideally  
3 like to take during this period of time. So, let me suggest  
4 a couple of things.

5 For example, if there is somebody who is a  
6 percipient witness to an actual incident -- let's say that  
7 person was either a passenger in the car together with the  
8 Plaintiff or observed some kind of interaction between the  
9 Plaintiff and the driver when the car stopped -- that person  
10 may well be a critical witness, and it would be  
11 understandable to me that Uber might want to take that  
12 person's deposition earlier rather than later.

13 On the other hand, if, as you suggest to me in the  
14 joint letter, the person called an Uber for the Plaintiff,  
15 and that's at least the extent of what you told me about  
16 that person's involvement, it seems to me that person is  
17 pretty far down on the list and their deposition is not  
18 going to be -- their deposition is not going to be critical.

19 Now, you know, I recognize that there may well be  
20 folks who are in between those extremes. Let's say that  
21 there is an issue about whether the Plaintiff, for example,  
22 was under the influence of alcohol or some kind of drug and  
23 the third party witness -- and that may bear on her ability  
24 to perceive. It may bear on her credibility or memory or  
25 something like that. I'm making this up, but I have a  
26 reasonable basis for inferring that may be an issue in some  
27 of these cases. And let's say the third party didn't  
28 observe the incident but observed the Plaintiff at a party

1     shortly before she called the Uber, for example. That  
2     person is kind of in the middle, if you will, of the  
3     spectrum that I'm suggesting between a percipient witness  
4     who actually witnessed the incident on one hand and somebody  
5     whose involvement in this may be much more -- or whose  
6     knowledge may be much more peripheral.

7             The middle course I'm suggesting here, maybe it's  
8     not that helpful because maybe I need to know more about who  
9     these folks are, what their percipient knowledge is and how  
10    important they are. But the principal --

11            The course that I'm suggesting is maybe there's a  
12    way of narrowing down the number of third party depositions  
13    to focus on those who are really most important to Uber to  
14    conduct over this period of time.

15            So, let me turn to Mr. Abramson first and get his  
16    reaction to this, and then let me hear from Uber's counsel.

17            MR. ABRAMSON: Thank you, Judge Schulman.

18            So, let me back up a little bit and broadly kind  
19    of expand on our position, if I then can address the  
20    specific kind of proposal that you're leaning towards.

21            So, on third party discovery, we agree third party  
22    discovery for the trial set cases will need to be done.  
23    There's no question about it. There is a difference,  
24    though, between having perfect information at this stage and  
25    prioritizing what actually needs to be done in order to get  
26    trials ready for the summer of 2025 in your schedule. These  
27    third party depositions are wide ranging. Of course, they  
28    want them, but we can't let perfect be the enemy of good

1 here. There are tons of third party depositions we want  
2 also, not just the driver. We put this in the letter. The  
3 persons who spoke to the client when they call in to report  
4 the incident, the employee at Uber who did the background  
5 check, the employee who made the deactivation decision or  
6 not, the employee at Uber who may have or may not have  
7 discussed the incident with law enforcement. We will get to  
8 all of those. None of us are working with perfect  
9 information.

10 (Whereupon, the court reporter asked the attorney  
11 to slow down.)

12 MR. ABRAMSON: Uber has access to all of those  
13 employees that communicated with the Plaintiff that made the  
14 decision about the driver. We don't have that information  
15 right now other than through some written form or through  
16 documents. The same holds true for Uber on the other side.  
17 They're going to get the deposition of the Plaintiff. They  
18 have a comprehensive fact sheet. We've done a lot of  
19 written discovery. That is sufficient to rank these  
20 Plaintiffs right now.

21 Once the Court decides on which cases will be set  
22 for trial in the summer of 2025, it's open season for third  
23 party depositions in those cases, and there will be far  
24 fewer of them to deal with.

25 The question that I don't think we are giving  
26 enough credence to -- and I know the Court has recognized  
27 this in the past -- these are sexual assault victims. Every  
28 time they have to not only be deposed -- and they've all

1 agreed to be deposed -- but now we're going to go to their  
2 families and relatives and people they may have talked to  
3 after the incident. This is another way to dissuade these  
4 women from going forward and having their day in court. For  
5 the ones who are going to trial, we need to do that, but why  
6 traumatize 20 women by taking four to five third party  
7 depositions right now when we have enough information from  
8 both sides, imperfect though it may be, to rank these  
9 Plaintiffs, get an order from the Court, and then focus in  
10 on full fledged third party discovery. We're going to have  
11 two and half months, but there's only going to be probably  
12 six to eight that we're really going to need to work up at  
13 that point.

14           There are hundreds of attorneys that are involved  
15 in this litigation. We can handle it.

16           So, with respect to your proposal, I understand  
17 there may be a situation where there are some, you know,  
18 I'll call it a liability witness as opposed to a damages  
19 witness, someone who was actually in the car. There may be  
20 that person. If they want to talk to us about that person,  
21 of course we'll meet and confer and talk about that one  
22 deposition. My suggestion would be let's get these  
23 Plaintiffs taken first. Let's focus on the Plaintiff.  
24 After taking the Plaintiff, if there's some reason that they  
25 need additional information that they deem relevant, we can  
26 ask your Honor for authority to do that.

27           Or it may be the other way. We may think, hey, we  
28 really need the driver or we need this person the Plaintiff

1 say they talked to about the incident. We may come to you  
2 and ask you for that before the deadline.

3 But I feel like we're biting off more than we can  
4 chew during this phase. With corporate discovery severely  
5 lacking, the focus is -- we are very concerned that the  
6 delay is not necessarily going to be with these third party  
7 depositions in getting the specific cases ready, it's going  
8 to be with us getting the discovery we need from Uber from a  
9 corporate liability perspective to put on our case.

10 THE COURT: I do want to talk about those issues,  
11 but I'm putting them off until later in the hearing.

12 When you list, for example, potential percipient  
13 witnesses who are or were Uber employees who, for example,  
14 may have fielded a call or a complaint from a Plaintiff, may  
15 have communicated with law enforcement or decided not to  
16 communicate to law enforcement, whatever the case may be and  
17 so on, are you saying that Plaintiffs are agreeing to hold  
18 off on any of those percipient depositions until the fall as  
19 well?

20 MR. ABRAMSON: Absolutely. We can't have it both  
21 ways.

22 THE COURT: I wanted to clarify that.

23 MR. ABRAMSON: Yes, sir. The driver, too. Again,  
24 there may be exceptional circumstances on both sides. After  
25 taking the Plaintiff or based on the information provided  
26 that would warrant going to your Honor saying these three  
27 people on both sides, we really need to take those so we can  
28 understand this case so we know where to rank it.

1           That may be fine, but this blanket idea that right  
2 now we need to devolve into comprehensive third party  
3 discovery is, for us, is an inefficient use of resources and  
4 really is potentially harmful to our clients.

5           THE COURT: Let me throw out another possible  
6 approach here and get your reaction to it, and then hear  
7 from Ms. Phillips.

8           Another possible approach that occurs to me as we  
9 discuss this is to revisit this issue after the individual  
10 Plaintiffs' depositions have been taken. As one of you  
11 pointed out, you know, during the course of those  
12 depositions Plaintiff may well disclose the existence of  
13 somebody who is not listed in a Plaintiff's fact sheet or  
14 may clarify the knowledge or role of that person in her  
15 testimony, and that may prompt one side or the other to  
16 either have more interest or less interest in deposing that  
17 person. Maybe this question of third party depositions is  
18 one that we can revisit down the road once the basic  
19 Plaintiffs' depositions have been taken and you all have had  
20 a chance to absorb what that testimony tells you.

21           What do you think about that, Mr. Abramson?

22           MR. ABRAMSON: I think that sounds reasonable. I  
23 think that we should focus on the Plaintiff depositions, get  
24 those done, and if there are exceptional circumstances that  
25 warrant a third party deposition on either side prior to the  
26 ranking deadline, we should revisit that with your Honor and  
27 seek your guidance on that.

28           THE COURT: Ms. Phillips?



1 MS. PHILLIPS: Thank you, your Honor.

2 I do agree with your Honor that there should and  
3 can be a middle ground. I think the right question to ask  
4 is what that is.

5 If I may take a step back, I have a few points,  
6 obviously, that I would like to respond to here. These are  
7 complex, highly fact-specific cases, and Uber needs to take  
8 sufficient discovery in advance of the ranking deadline for  
9 us, which is September 28th, to understand exactly what  
10 happened before, during and after these rides and how the  
11 incident impacted these Plaintiffs. This is important for  
12 precisely for the reason your Honor has recognized, which is  
13 to determine the facts and circumstances -- and that is  
14 inclusive of damages issues -- are representative of the  
15 allegations in the other cases in the JCCP. I think that's  
16 really critical.

17 What the Plaintiffs appear to be trying to set up  
18 is what we view to be a real asymmetry of the information  
19 prior to that ranking deadline. The Plaintiffs' counsel  
20 have full access to the Plaintiffs in this case. They've  
21 had access to the friends and family members. They can have  
22 conversations. We understand that in many of those  
23 circumstances they are or will be representing those  
24 individuals for purposes of the deposition, so those  
25 communications are privileged. Uber knows none of that.

26 So, what the Plaintiffs are suggesting is that  
27 information from Plaintiffs themselves in Plaintiffs'  
28 depositions without any other depositions to corroborate or

1 contradict that testimony is sufficient for the ranking.  
2 And we just don't agree with that, and we don't think that's  
3 right.

4 In terms of the first proposal that you made, your  
5 Honor, talking about the percipient witnesses, people  
6 physically in the car, of the 20 bellwethers there were two  
7 cases where that was the situation. There were individuals  
8 in the car during the assault. As it happens, those are the  
9 two cases that the Plaintiffs have unilaterally dismissed.  
10 So, I don't believe there are percipient witnesses to the  
11 actual alleged assault in any of the 18 remaining bellwether  
12 Plaintiffs, which is why I certainly think we have to go  
13 broader. We are interested in understanding when somebody  
14 saw a Plaintiff before and after the incident, what they  
15 have to say about that.

16 It's particularly important because the third here  
17 where many of the Plaintiffs, a large majority of the  
18 bellwether Plaintiffs have alleged in their Plaintiff fact  
19 sheets that they were severely intoxicated and have memory  
20 loss due to the influence of alcohol or drugs. In those  
21 circumstances, third parties filling in those gaps is going  
22 to be really critical to our ability to rank these and,  
23 frankly, your ability to understand how representative these  
24 cases are for purposes of the other cases in the JCCP.

25 THE COURT: Really? I mean, if in --

26 You know, if it's a he said she said case as to  
27 what happened in the car and you already know that that  
28 given Plaintiff was intoxicated and there's no percipient

1 witness to the interaction between the Plaintiff and the  
2 driver, what is some third party witness going to tell you  
3 other than confirming what you already know, which is the  
4 extent of intoxication, for example?

5 MS. PHILLIPS: Yes, sure. I'm happy to answer  
6 that question, your Honor.

7 (Whereupon, the court reporter asked the attorney  
8 to slow down.)

9 MS. PHILLIPS: I'm sorry.

10 If the individual spoke with someone after the  
11 incident and didn't mention the incident, right? That would  
12 be relevant information for purposes of the credibility and  
13 the story that the Plaintiff has to tell.

14 Let's take WHEEL, for example. That is a  
15 Plaintiff who alleges she was drinking heavily on the beach.  
16 She alleges it is possible that one of the other people we  
17 are seeking to depose may have drugged her and may have, in  
18 fact, been the person who assaulted her. What we are trying  
19 to understand is what led up to the incident itself, and we  
20 think that testimony is very relevant and very important for  
21 purposes of our ranking.

22 In terms of your ranking.

23 In terms of other third parties, for example, we  
24 are interested in deposing some of the medical providers  
25 here, right? Understanding damages and how representative  
26 the damages are is going to be important for that ranking  
27 decision and understanding whether there were preexisting  
28 conditions and what the differences are in the post incident

1 damages.

2 For that, obviously, we will depose the Plaintiffs  
3 but are interested in deposing certain of the medical  
4 providers who can get to those before and after an incident.

5 I wanted to respond, if I may, your Honor, to your  
6 suggestion --

7 THE COURT: Hang on a second.

8 MS. PHILLIPS: Of course.

9 THE COURT: You all, obviously, are much more  
10 focused in on these cases than I am. Let me just ask a  
11 couple more questions to understand kind of the composition  
12 of the cases. Of the 18 remaining cases, how many of them  
13 are cases in which there was a report to law enforcement?

14 MS. PHILLIPS: I believe there are nine of the 18  
15 cases where law enforcement third parties will be deposed.

16 THE COURT: And how many of the 18 cases are cases  
17 in which there was a rape kit or other type of forensic  
18 medical examination conducted?

19 MS. PHILLIPS: I don't have that number.

20 THE COURT: Presumably, it's less than the nine in  
21 which there was a report to law enforcement. It's some  
22 subset of the nine.

23 MS. PHILLIPS: That's correct.

24 THE COURT: When you're talking about medical  
25 providers, you're talking more broadly, I take it, about  
26 what? Therapists who the Plaintiff may have consulted weeks  
27 or months after the incident?

28 MS. PHILLIPS: Yes.

1           THE COURT: Are you talking about physical pelvic  
2 exams? What are we talking about?

3           MS. PHILLIPS: The focus, I think, will be  
4 predominantly on mental health issues. In some cases --  
5 certainly not all of them -- there are also physical damages  
6 alleged. In those particular cases, we obviously would be  
7 interested in exploring the extent and whether any of those  
8 physical damages that were claimed after the fact were  
9 preexisting conditions.

10          THE COURT: I interrupted you. There was more  
11 that you wanted to say on this?

12          MS. PHILLIPS: I just wanted to make a couple of  
13 points with regard to time. One I believe your Honor  
14 alluded to. We have a concern. There is time now; it's  
15 May. We have until September 28th, which is the ranking  
16 deadline. After your Honor sets the trial order, we will be  
17 limited to two and a half months where there will be  
18 holidays. That makes scheduling substantially more  
19 difficult. We think it makes sense to get through some  
20 subset of the third party depositions now while we can where  
21 neither side is waiting for documents. We can take the  
22 depositions without needing to be concerned about document  
23 discovery from those third parties.

24          In the previous IDC where the Plaintiffs were  
25 arguing that the Plaintiff depositions should be pushed, we  
26 have proposed dates from Plaintiffs in five of the 18 cases.  
27 Two of the cases, those dates are in late August. We just  
28 don't think that that provides us with a sufficient amount

1 of time for us to wait for all the Plaintiffs to be deposed  
2 and then turn to third party depositions. We think third  
3 party depositions getting started on those while we are also  
4 getting started in June, July and August deposing the  
5 Plaintiffs themselves, that will help us move toward that  
6 January 15th discovery date.

7 This will be my last point on this, your Honor.  
8 The January 15th date isn't just for the first, second or  
9 third cases that are going to go to trial in summer of 2025.  
10 It's all of the bellwether cases. It's all of the cases.  
11 Uber cannot forgo taking important third party depositions  
12 prior to that deadline. We've got to take those.

13 What the Plaintiffs are proposing is to really jam  
14 them in in an incredibly condensed time period with the  
15 holidays.

16 THE COURT: You told me at the outset of your  
17 remarks that you agree that some kind of middle ground  
18 approach here, that is something in between a green light to  
19 all third party discovery for both sides and a red light to  
20 all third party discovery until October or November, I  
21 suppose, is appropriate. You've now told me that the second  
22 idea that I threw out which is that you all come back after  
23 the Plaintiffs' depositions is not practical because at  
24 least some of those may take place in late August.

25 What are you suggesting by way of a middle ground  
26 here?

27 MS. PHILLIPS: Sure. I think it probably makes  
28 the most sense for Uber and the Plaintiffs to meet and

1 confer on this. We've always been willing to talk to them.  
2 We reached out to them at the outset, and the answer was a  
3 flat no.

4 My proposal would be to meet and confer with the  
5 other side and see if we can come up with something  
6 acceptable.

7 THE COURT: That's always a tempting answer from  
8 counsel, but I don't want it -- I don't want anybody to take  
9 away from that that I'm kicking something down the road  
10 here.

11 What's your reaction, Mr. Abramson, when you think  
12 that combined with my initial reactions here that's likely  
13 to be a productive avenue?

14 MR. ABRAMSON: We're always open to meeting and  
15 conferring to try to resolve issues without your guidance.  
16 That being said, I think it's more likely than not that  
17 we'll be back before you on the same issue in 30 days if we  
18 don't at least try to get to this.

19 The problem is there are middle grounds here. For  
20 example, after a Plaintiff is deposed, it doesn't have to be  
21 all at one time. It doesn't have to be for every  
22 Plaintiff's deposition that moves forward, and only then can  
23 you talk about any third parties. There are going to be  
24 Plaintiffs deposed in June. After June, if there's a third  
25 party witness that either side feels is relevant, let's have  
26 some timeframe where we meet and confer after a two-week  
27 period to confer after the deposition. And then we can come  
28 to your Honor if we can't come to a resolution as to what

1 additional third parties, if any, need to be deposed. That  
2 seems sensible.

3 The other point that Ms. Phillips made about all  
4 fact discovery needs to be on all twenty bellwethers, that's  
5 just not how we see it. I don't think that's necessary. I  
6 think the focus should be once we have trial set cases,  
7 discovery for those six to eight, however many your Honor  
8 decides, those are the focus until January 15th, and we can  
9 kind of put the other 14, 12, whatever they are, to the side  
10 for additional third party discovery.

11 The reality is I don't think this advances the  
12 ball because doing third party discovery right now before we  
13 know which cases really are going to need it, you're going  
14 to end up with a bunch of third party depositions that went  
15 forward that otherwise did not need to because they're not  
16 even trial set. I just don't understand the purpose of  
17 doing that right now when there's so much we need to do on  
18 the corporate discovery side and on this side. Let's focus  
19 on that.

20 THE COURT: Let me say two things here, and let's  
21 see if we can move ahead. Not to preclude Ms. Phillips if  
22 you have something additional.

23 First of all, I agree with Mr. Abramson. I did  
24 not contemplate when we set at the parties' suggestion a  
25 fact discovery cutoff date of January 15, 2025 that would  
26 apply to all of the cases. What I contemplated was that it  
27 would apply to the initial set of bellwether cases that are  
28 within the 20, now 18, that the parties have designated. It



1 certainly doesn't apply to -- what do we have now? -- 340 or  
2 something cases. I don't think that's what you were  
3 suggesting, was it?

4 MS. PHILLIPS: No, no. My understanding is that  
5 the January 15th deadline does apply to all the bellwethers,  
6 whether 18, or eventually 20.

7 THE COURT: Let me suggest this. Mr. Abramson has  
8 in, I think, a pretty creative way melded or combined the  
9 two ideas that I threw out as a middle ground here, which is  
10 to say in each case within -- fill in the blank, he  
11 suggested 14 days -- after the completion of the Plaintiff's  
12 deposition, the parties will meet and confer about whether  
13 any third party discovery is desirable with the goal of  
14 limiting such third party discovery during this initial  
15 period prior to the bellwether trial order submissions, the  
16 cases that, you know, one party or the other believes are  
17 critical to their ranking and assessment of the cases. And  
18 then in the event that parties are unable to agree on that,  
19 then you can come back to the court.

20 Mr. Abramson, is that a pretty fair summary of  
21 what you suggested?

22 MR. ABRAMSON: More articulate, but yes.

23 THE COURT: What do you think, Ms. Phillips?

24 MS. PHILLIPS: Your Honor, my concern with that is  
25 that allows completely unilaterally the Plaintiffs to  
26 dictate the order in which the depositions are going to  
27 happen. For example, two of the four cases that we had  
28 attempted to take third party depositions in are the

1 depositions of Plaintiffs that have been offered only for  
2 late August. Right off the bat, again this allows the  
3 Plaintiffs to dictate.

4           What if, instead of meeting and conferring, what  
5 if we said three to five third party depositions in each of  
6 the bellwether cases going forward, and obviously we have to  
7 find mutually agreeable times for that. I don't think we  
8 have to wait for the Plaintiff depositions here. The  
9 Plaintiffs have identified, in the Plaintiff fact sheets and  
10 the written discovery, individuals they have said have  
11 important information for the cases. Those are the  
12 individuals that we are most interested in deposing, and our  
13 view is that we should go forward now instead of on a  
14 schedule unilaterally dictated by the Plaintiffs.

15           THE COURT: The problem with arbitrarily picking a  
16 number, whether it's two to seven or three to five as you  
17 just proposed, is I don't have any basis in what you've told  
18 me here for knowing how important these depositions are.  
19 We've talked in the abstract about what a given witness in  
20 some unidentified case might or might not know. Obviously,  
21 I'm not familiar with the individual cases.

22           So, rather than pick an arbitrary number, I'm not  
23 ruling out here the parties talking. You know, for example,  
24 in cases where the Plaintiffs' depositions are not going to  
25 be taken until late August, talking now and having you  
26 calling up Mr. Abramson and saying: Look, I know we're  
27 going to meet and confer in the wake of the Plaintiffs'  
28 depositions, but we're concerned about times. We're going

1 to have 30 days after Plaintiff X's deposition in late  
2 August. Here are one or two third party depositions that I  
3 really think are critical, and here's why.

4 I would be more comfortable with the parties  
5 proceeding in that way than with the suggestion that we  
6 adopt kind of a one size fits all rule of thumb of three to  
7 five depositions per case, because I just don't have any  
8 basis for knowing that's the appropriate number or why.

9 MS. PHILLIPS: I mean, I think, your Honor the why  
10 is because this is the number of people --

11 THE COURT: When I'm talking, please don't talk  
12 over me.

13 MS. PHILLIPS: I apologize.

14 THE COURT: You all may succeed in persuading your  
15 friends at the other counsel table that, yes, such and such  
16 a person is critical, and here's why. But all I'm saying is  
17 I don't really see a basis for me to say that makes sense in  
18 what's before me.

19 Of course, I'm not making any rulings at an IDC,  
20 in any event. I'm trying to assist the parties in reaching  
21 some sort of agreement that seems reasonable, but it's  
22 informal guidance. It's not a ruling. I can't issue a  
23 binding ruling unless there's a properly adjudicated motion  
24 before me.

25 So, I'm just trying to find a flexible way here of  
26 getting you all to guess without a whole series of contested  
27 motions. I don't want to hear, you know, 18 motions in 18  
28 different cases about disagreements about whether third

1 party depositions are or are not critical. My hope is that  
2 you all can find your way toward a process that would allow  
3 you to agree on a middle ground. In most cases, it means  
4 talking after the Plaintiff's deposition, but in some cases  
5 if it means talking before them, I don't see why that's not  
6 a reasonable way to proceed.

7 MR. ABRAMSON: Judge Schulman, if I could maybe  
8 put a little more color on what you just said and propose  
9 something that I think is in line with what you said and may  
10 alleviate some of Uber's concerns. Maybe the way we can do  
11 it is for any Plaintiff deposition that is set before July  
12 31st. They would have, at that point, two months. Within  
13 seven days, ten days, 14 days, whatever the number, both  
14 sides should meet and confer about any third party  
15 depositions that they wish to take that they deem to be  
16 critical. If we're unable to reach a resolution on those,  
17 we can bring it to your Honor.

18 Your Honor made yourself very available to us. It  
19 seems that we could probably get in front of you pretty  
20 quickly, depending on your schedule.

21 For any deposition of a Plaintiff set after July  
22 31st, let's start that right now. This isn't gamesmanship  
23 or us unilaterally dictating stuff. These are sexual  
24 assault victims, and we're trying to find dates that work  
25 for them. It may be some that are in August. Admittedly,  
26 that will crunch them if we want to run through this process  
27 in a fair way. For anybody we can't give them a date before  
28 July 31st for, for those let's meet and confer now for both

1 sides. If we believe there's a critical Uber witness that  
2 we want to take, we'll talk to them about that and vice  
3 versa. We'll try to get those resolved right now so neither  
4 party is hamstrung with those Plaintiff depositions.

5 THE COURT: We're starting to slice this pretty  
6 fine.

7 MR. ABRAMSON: I understand.

8 THE COURT: Again, just as I don't want to accept  
9 a number pulled out of the air for a number of third party  
10 depositions, neither do I want to start setting arbitrary  
11 deadlines and say, well, the deposition was on July 30th  
12 rather than August 1st.

13 Let me suggest that the parties meet and confer as  
14 soon as possible, that Uber think seriously about narrowing  
15 the number of third party depositions that it wishes to  
16 take, and focus on the ones that it really thinks are  
17 critical to the assessment process and that that process  
18 start now, but to the extent that it's appropriate that you  
19 revisit it after a given Plaintiff's deposition and see if  
20 you can't reach agreement. I don't want to start creating  
21 out of thin air these hard structured rules that seem fairly  
22 arbitrary.

23 I've given you some initial reactions that I hope  
24 will allow you all to reach agreement on most, if not all,  
25 of these cases.

26 I kind of want to leave it there unless there's  
27 something critical that either side wants to add.

28 MS. PHILLIPS: Not from me, your Honor. Thank

1 you.

2 THE COURT: The other issue that you teed up  
3 directly here -- and I recognize there are these other  
4 issues lurking, but I want to put those off again until the  
5 end of our discussion -- relates to the strike process. As  
6 I understand it, there have now been two individual  
7 Plaintiffs of Plaintiff's original list of 10 who have been  
8 voluntarily dismissed from the pool. And the latest of  
9 those, as I understand it, is that the Plaintiff has become  
10 nonresponsive, as it's stated in the letter here. I'm not  
11 sure if Plaintiff's counsel are unable to communicate with  
12 her or if she's unwilling to sit as a bellwether Plaintiff  
13 at trial. I'm not sure it matters. What Uber is suggesting  
14 here is that the Court revisit the process that we put in  
15 place just a month ago when the first of those Plaintiffs  
16 voluntarily dismissed her case. And then, basically, it  
17 allowed Uber to strike one of Plaintiff's selections once a  
18 Plaintiff has been voluntarily dismissed.

19 Let me give you an initial and much more  
20 clear-edged reaction to this. Number one, I assume and will  
21 continue to assume unless there's some reason for --  
22 compelling reason -- for me not to, that these dismissals  
23 were made in good faith. I'm not going to assume that they  
24 reflect gamesmanship or something worse on the part of  
25 Plaintiff's counsel.

26 Number two, I don't see a need at this point to  
27 revisit the process that we agreed on and that I ordered  
28 when you were last here on April 12th. What that process

1 was was a joint proposal from the parties that in the event  
2 a bellwether case was dismissed, whether by one party and  
3 whether by the Plaintiffs or by the Court, the party that  
4 initially proposed that case may choose a replacement. And  
5 if that occurred before July 10, then the replacement case  
6 may be considered in the pool for the bellwether ranking.

7 We're still just a little more than 30 days since  
8 we last discussed that issue. I'm not inclined to revisit  
9 it now. Even if I were, frankly, the proposal that Uber has  
10 made here strikes me as pushing in the wrong direction,  
11 because it would end up with a lopsided group of cases so  
12 that now there are 18 cases of which eight are Plaintiff's  
13 proposed cases, but you would have me say, well, now there  
14 will be only seven proposed Plaintiffs' cases, and if there  
15 were a further dismissal that number would decrease.

16 That just seems to me it's unfair on its face.  
17 But, in any event, I don't want to spend much time  
18 discussing it because I don't think there's a need to do so  
19 now. If we get to the July 10 date and there's a flurry of  
20 dismissals thereafter or there's one or more dismissals  
21 thereafter, there's a reason for us to talk about that  
22 between that date and the September -- I think it's  
23 September 30th, actually. You keep saying September 28th,  
24 Ms. Phillips, but I think it's the September 30th deadline  
25 for parties to talk about proposals.

26 Go ahead. Hang on. There's some echo going on  
27 here. Everybody not speaking, please make sure to mute  
28 yourselves.

1 MS. RUBIN: Let me try again. I think that's  
2 better, right?

3 THE COURT: Yes.

4 MS. RUBIN: Terrific, thank you. Jackie Rubin.  
5 And it's nice to see you again, your Honor.

6 I just want to make sure we're talking about the  
7 same thing. First of all, the unilateral dismissals were of  
8 choices that Uber had made to the bellwether pool. So,  
9 there are now eight Uber choices.

10 THE COURT: Okay. I may have -- I did  
11 misunderstand that.

12 MS. RUBIN: Okay. So, both of the dismissals that  
13 the Plaintiffs have chosen to make were Uber choices.

14 THE COURT: All right.

15 MS. RUBIN: So, Uber now has eight, and the  
16 Plaintiffs now have ten.

17 THE COURT: All right.

18 MS. RUBIN: That's number one.

19 Number two is the process by which -- that we  
20 proposed was not to change actually what had been ruled on  
21 last time. It was, instead, to add another aspect to it  
22 which is that if the Plaintiffs unilaterally choose, as they  
23 did, again to dismiss one of Uber's choices, then Uber has  
24 the opportunity to strike one of the Plaintiff's choices.  
25 And then both Uber and the Plaintiffs would get the  
26 opportunity to choose a replacement for those cases.

27 So, it makes it equal. Both sides have to choose  
28 a replacement for themselves, and thereby makes it fair that



1 if one of the Plaintiffs had gotten rid of one of Uber's  
2 choices, we would have the opportunity to get rid of one as  
3 well.

4 THE COURT: I feel like I'm sitting in a room with  
5 a bunch of chess competitors, and you all are consulting  
6 your game theory handbooks and trying to figure out what  
7 approach gives you the best advantage at the end of the day.  
8 Recognizing that I made a mistake in my understanding here,  
9 Uber, as I understand it, under the prior agreement and  
10 order has an opportunity to choose replacements for the two  
11 cases that have now been dismissed by the Plaintiffs.

12 MS. RUBIN: Correct.

13 THE COURT: Rather than trying to fine tune what  
14 we've already done and start monkeying around with it in  
15 ways that I'm not sure I have the sophistication to  
16 understand how they will affect parties, what I'm telling  
17 you is I'm inclined to leave in place the current proposal  
18 and the current order. And if there's a problem down the  
19 road, you all let me know about it. I don't want to keep  
20 revisiting issues.

21 So, that's my reaction to that. I've been pretty  
22 blunt about my reaction to that one. This is not one where  
23 I'm feeling my way and see whether there's a middle ground.  
24 I don't think it's appropriate at this point. It may become  
25 appropriate down the road. Let's not anticipate problems --

26 MS. RUBIN: Understood, your Honor.

27 THE COURT: -- one we've already solved, at least  
28 in the interim. Everybody okay with that?

1 MR. ABRAMSON: Yes, sir.

2 THE COURT: All right. Let me briefly just --

3 Recognizing we kind of directly teed up these  
4 issues, let me just briefly explore the other issues that  
5 have been raised in the letter here, because they do give me  
6 some concern. And there are at least two that I saw.

7 One is what's been characterized as the slow pace  
8 of Uber's production of so-called corporate liability  
9 documents. I do see attached to the letter the so-called  
10 hit list which shows me the number of -- gross number of  
11 documents -- that apparently have been collected with  
12 respect to at least the initial 16 prior custodians, if  
13 that's what I understand the 20 million document number to  
14 be.

15 MR. SHORTNACY: Michael Shortnacy speaking.  
16 Twenty-six priority custodians, your Honor.

17 THE COURT: Twenty-six priority custodians but 20  
18 million documents, right?

19 MR. SHORTNACY: Correct.

20 THE COURT: And then I see the number of hits by  
21 category on each of these search strings where, you know,  
22 the numbers range from, you know, four figures to five  
23 figures to six figures, depending on which category, and in  
24 some cases seven figures, more than a million documents  
25 depending on which category we're talking about. I'm being  
26 told a very small fraction of the responsive documents have  
27 been produced to date. That concerns me, because as our  
28 prior discussion illustrates, we're all concerned about time

1 limitations here.

2 I don't view this as an issue linked to the  
3 Plaintiffs' depositions or the third party depositions  
4 issues that we've been discussing, but it's obviously an  
5 important piece of the larger discovery pie. I'd like to  
6 get at least some sense at this point, recognizing that it's  
7 not a formal subject for IDC, that this is going to happen  
8 and it's going to happen timely in a way that doesn't  
9 jeopardize the entire schedule.

10 Mr. Shortnacy, you seem to have raised your hand  
11 to assure me that's not going to be a problem. I'd like  
12 some detail on that.

13 MR. SHORTNACY: Certainly, your Honor.

14 As we talked about in the last conference, the  
15 corporate documents are certainly voluminous, but Uber has  
16 made two productions previously. I forecasted to your Honor  
17 at the conference that we were going to make a production on  
18 the 30th. We did, in fact, make a production. Mr. Abramson  
19 has characterized that as small. It is small. And I think  
20 I tried to explain this to your Honor last time, but let me  
21 try again.

22 This is a complex, highly voluminous review  
23 project. It takes time to get the resources in place in  
24 terms of mechanics and processing and collection of the  
25 documents. That sort of power for liftoff, if you think of  
26 getting the jumbo jet off the runway, is considerable but  
27 once it gets going, it gets going. There was some delay,  
28 because as your Honor can see in the ESI protocol that was

1 submitted this morning in section 8, the provisions  
2 pertaining to the technology assisted review process, which  
3 we sometimes refer to as TAR -- I'm not sure of the page but  
4 it's at section 8 and following.

5 The COURT: I see it.

6 MR. SHORTNACY: That was just ruled on by Judge  
7 Cisneros and entered -- let me step back.

8 There were aspects of those provisions in dispute,  
9 and Judge Cisneros ruled on those provisions on the 15th of  
10 March. That sort of locked in place the process for the  
11 first time that would be used to apply technology assisted  
12 review to the review process. I'm explaining that to your  
13 Honor to explain why there was some delay. I think it was  
14 portrayed in the joint letter and the Plaintiff's position  
15 that we've had everything sitting around for six months, and  
16 so on and so forth. That's not the case.

17 The context to that is important. That March date  
18 is important. We're getting off the ground. We've made the  
19 production on April 30th. We're intending to make another  
20 production tomorrow, the 17th of May. That again,  
21 admittedly, will be relatively small, but we have projected  
22 a sort of pipeline and cadence for production that we  
23 believe we will be able to get through in June and July and  
24 following to be completed substantially by September.

25 Let me pause for a moment and talk about what that  
26 corpus looks like. When we talk about the TAR model and  
27 what your Honor is seeing in the hit report, the volumes are  
28 quite high, but the computer model which is fed decisions on

1     responsiveness and sort of learns and predicts  
2     responsiveness has to reach a point of stability where we  
3     can comfortably cut off the review. That model is telling  
4     us that there are about 350,000 more documents to review,  
5     and we believe that we will get through those documents by  
6     September and that we have planned periodic rolling  
7     productions to Plaintiffs in the interim that I can  
8     represent to the Court will be much more substantial than  
9     they have been before, because, again, that TAR model is put  
10    in place. The processes used are in place. Those  
11    productions will pick up in volume.

12                 So, I understand the criticism from Plaintiffs,  
13    but I can assure both the Plaintiffs and the Court that the  
14    productions will become more voluminous as we get into the  
15    next installments.

16                 THE COURT: So, you're telling me the jumbo jet  
17    here is barely off the runway, but it is picking up speed  
18    and will be at altitude in time, essentially?

19                 MR. SHORTNACY: Essentially, yes, that's right.

20                 THE COURT: I hope you've been in touch with your  
21    friends on the other side to let them know that, and I hope  
22    you will remain in touch with them to keep them apprised of  
23    your progress. Obviously, that's critical here. I don't  
24    know what more I can do with this.

25                 Does somebody on the Plaintiffs' side want to  
26    address it? Mr. Abramson.

27                 MR. ABRAMSON: I would, your Honor. Thank you.

28                 I will tell you that what Mr. Shortnacy is saying,

1 I understand it, but it is frustrating and it threatens our  
2 trial. Let me explain a little bit why.

3 We went through all of this at the CMC in April.  
4 We put this in our joint letter. You asked them point-blank  
5 if they were going to substantially be able to produce the  
6 documents for the corporate liability side in the next  
7 couple of months. That would be the middle of June. Now,  
8 we're being told September 1st. That's a very big  
9 difference.

10 The problem with this is we cannot take a  
11 deposition of an Uber witness custodian until we have their  
12 complete custodial file. But we're being told based on the  
13 way the TAR system works -- and I've asked Mr. Shortnacy  
14 this several times over the last week or so -- is there a  
15 way to prioritize eight or nine of these 26 custodians so we  
16 get their complete custodial files in the next 30 days so we  
17 can start taking depositions of those people. And I haven't  
18 gotten a response. I don't know what the answer is.

19 I'm hopeful there's some ability to make progress.  
20 Let's assume there's not. Mr. Smith, when he was involved  
21 before, intimated to us that that's not possible. The way  
22 the TAR system runs, it has documents of all 26 custodians  
23 in a pot. It puts them out, but not by custodian but by  
24 relevance.

25 So, what Mr. Shortnacy is saying is it won't be  
26 until September 1st that we will know that we have a  
27 substantially complete custodial file for any Uber corporate  
28 witness. They may dump a bunch of documents on us on August

1 30th. It takes time to review those documents, which means  
2 we won't be able to take a single Uber corporate custodian  
3 liability, which is the essence of our case, until late  
4 September or October. That's just untenable.

5 And it is in direct contrast to what he told the  
6 Court. I'm not trying to cast aspersions. It is what is on  
7 the record from him at the April 12th hearing.

8 This is the first time I've heard September 1st.  
9 That's why I'm frustrated. I'm a little bit taken aback.

10 This idea of just because you make a production  
11 and saying we're going to get a production just doesn't mean  
12 much. What is the production? Is the custodial file for a  
13 particular Uber witness substantially complete so that we  
14 can start taking depositions, which we have to do?

15 THE COURT: Let me go back a step and ask Mr.  
16 Shortnacy. I'm blessed not to know anything about this  
17 technology, so I can ask ignorant questions. In the  
18 abstract, I don't see any reason that you shouldn't be able  
19 to prioritize particular custodians. You just give the --  
20 you just run the search on whatever that subset is of  
21 documents first, as opposed to running it on the entire  
22 database.

23 Am I wrong?

24 MR. SHORTNACY: That's right. I think my  
25 colleague, Mr. Oot, can speak to that as well.

26 Mr. Oot, why don't you address that, and I want to  
27 address the issue Mr. Abramson raised at our last  
28 conversation, because that is not what we talked about in

1 terms of substantial completion. But I want to make sure  
2 your Honor's question is answered first.

3 MR. OOT: Patrick Oot from Shook, Hardy on behalf  
4 of Uber Defendants.

5 Just to back it up a little bit, the way the  
6 technology works, as Mr. Shortnacy mentioned, a lot of  
7 energy kind of goes into building the algorithm that selects  
8 the documents that are responsive. So, the key word search  
9 terms are the preliminary gateway that get us through to the  
10 use of the technology. Now, what's happened is through the  
11 meet-and-confer with Mr. Abramson, he asked that Plaintiffs  
12 obtain the benefit of the search terms from the MDL  
13 Plaintiffs. So, that discussion is going on. And that  
14 discussion will be either resolved or before Judge Cisneros  
15 by June 6th.

16 So, what is slowing the process down, I guess --  
17 and maybe this is what you're getting at -- is that the  
18 additional keyword search term negotiations that are going  
19 on with the MDL where we agreed with Mr. Abramson that we  
20 would provide those additional documents here in the JCCP as  
21 part of the overall coordination is that we have to  
22 normalize that first gateway of the keyword search terms,  
23 and then the technology applies and there is some human  
24 review that helps stabilize that technology.

25 So, getting to your question of can we break out  
26 individual custodial files on sort of an ad hoc basis, that  
27 is something technically we can do, however, I would caveat  
28 that we would be using the JCCP word search terms that we



1 negotiated with Mr. Abramson, and there may be an issue  
2 where additional documents would be produced beyond an  
3 initial custodial file as a result of the negotiation.

4 What we're trying to avoid is a circumstance where  
5 we have a different custodial file that Mr. Abramson has  
6 access to than something that is later negotiated by June  
7 6th in the MDL negotiations. So, we're trying to normalize  
8 that set so the coordination and all of the sort of benefits  
9 of that will apply in this case and the MDL.

10 THE COURT: Let me try and restate some of that in  
11 English to make sure I understood it. You all are in  
12 negotiations in the MDL regarding search terms or search  
13 strings, and those are to culminate in an agreement by June  
14 6th or 7th, you said?

15 MR. OOT: That is correct, your Honor.

16 THE COURT: That means the hit list that I've been  
17 given here as Exhibit 3 or whatever to the joint letter is a  
18 hit list in these coordinated proceedings based on the  
19 search terms or search strings that you've agreed to here.

20 Is that right?

21 MR. OOT: Correct, your Honor.

22 THE COURT: So no documents have actually been  
23 produced to date in the MDL because of the search protocol?

24 MR. OOT: Let's kind of back up. I wouldn't  
25 characterize as no documents, because there have been, I  
26 think, well over a hundred thousand documents that have been  
27 produced, but not what we'll call custodial documents.  
28 Again, those custodial negotiations are going on in the MDL

1 as well.

2 THE COURT: Okay. Of the roughly hundred thousand  
3 documents produced in the MDL, have those been produced to  
4 the Plaintiffs in this case?

5 MR. OOT: Correct, your Honor. There are  
6 different buckets of MDL productions.

7 For example, there are prior litigation  
8 productions and productions related to other investigations.  
9 Those have all been produced. So, it's my understanding  
10 those documents have been produced to the JCCP as well.

11 I think under the coordination order we are going  
12 to have a pathway where all of those productions will go to  
13 a single vendor.

14 THE COURT: If I understood you correctly, the  
15 answer is, yes, it's technically possible to prioritize  
16 production from specified custodial files so that those  
17 productions can be done earlier rather than later, correct?

18 MR. OOT: Correct, your Honor. It does add an  
19 additional burden aside from the keyword search term  
20 discussion, just because in the way the algorithm is set to  
21 select the documents, prioritizing custodians doesn't really  
22 help us accomplish that goal.

23 THE COURT: If that's what needs to be done to  
24 satisfy the Plaintiff's understandable concern about  
25 avoiding further delay, even if it creates some additional  
26 burden and maybe it creates additional delay and duplication  
27 down the road, it seems to me that's a reasonable request  
28 for them to make. Mr. Abramson says you, plural, haven't

1     responded to that request. I guess I'm suggesting your  
2     response ought to be an affirmative one.

3             Mr. Shortnacy?

4             MR. SHORTNACY: I would say we will respond with  
5     the Court's guidance in mind. I do think this is an ongoing  
6     discussion. As Mr. Oot was explaining, it's also ongoing  
7     with the MDL Plaintiffs and will hopefully be resolved, or  
8     if not resolved, put before the MDL Court.

9             And just to touch base on one part, in our last  
10    discussion, that, if you remember, was when the issues were  
11    more informally linked as between Uber's productions and the  
12    depositions. And I understood your Honor to be asking at  
13    that time: Would Uber, over the course of the summer,  
14    produce enough documents to satisfy the Plaintiffs?

15            And I don't think there was the same context and  
16    nuance to that discussion. I wanted to address Mr.  
17    Abramson's concern that might leave your Honor with the  
18    thought that I wasn't forthright or was backtracking on our  
19    prior discussion. I think those two things are quite  
20    different. I just wanted to clarify that for the Court.

21            THE COURT: I get the point that the documents are  
22    voluminous, that the productions are technically  
23    challenging, that there's potential conflict with what's  
24    going on in the MDL and what's going on here, but I'm  
25    hopeful that you've now heard Mr. Abramson's concern about  
26    delay. You've heard the Court's reaction. And hopefully  
27    that will help streamline things and get you all into the  
28    air where you need to be. I don't know what else to say

1 about that.

2 Mr. Abramson, is there anything else we can  
3 usefully talk about at this point?

4 MR. ABRAMSON: On this issue, your Honor, no.  
5 You've addressed it. I don't need to belabor it.

6 The other issue -- and it's in a footnote 1 in the  
7 joint letter.

8 THE COURT: That's where I'm going next.

9 MR. ABRAMSON: Then, I'll let you go there.

10 I'm sorry.

11 THE COURT: That was last on my list, there. If  
12 I'm missing something here, somebody will let me know.  
13 Footnote 1 does indicate that the parties, having agreed on  
14 26 priority custodians, have reached an impasse as to six  
15 additional custodians that Plaintiffs have sought to add.  
16 The footnote says the Plaintiffs are seeking permission to  
17 file motions to compel production of responsive documents  
18 held by those custodians.

19 So I understand this, again, the hit list that I'm  
20 looking at here is a hit list on the documents held in the  
21 26 custodial files and does not include these additional  
22 six.

23 Is that right.

24 MR. ABRAMSON: That's right. If I could put a  
25 little bit more color on the request, because it is in a  
26 footnote. If you'll remember, we originally -- we, the  
27 Plaintiffs -- proposed 143 custodians. That's a list that  
28 we made up, okay? Over time, because there were these

1 concerns about delay and how voluminous the document  
2 productions would be, we agreed to reduce it to these 26  
3 priority -- really, it was 18. And then we had motions to  
4 compel in front of your Honor on statistics, on senior  
5 executives, and on marketing and lobbying. Your Honor made  
6 certain rulings on those motions to compel.

7 And based on those rulings, we sought to add  
8 additional custodians. The parties agreed to eight of those  
9 additional custodians. We reached an impasse as to six of  
10 them. We've been negotiating these six custodians for a  
11 long time.

12 For example, Frank Chang. He is the head of  
13 Uber's data science group. He is the person who has signed  
14 off on documents that have gone to the TPUC. I'm not going  
15 to get into this, because it's not the proper time.

16 But we believe he's directly related to the kinds  
17 of documents we would need based on the ruling your Honor  
18 gave on the statistics motion. We'll probably get those in  
19 the custodial file.

20 (Whereupon, the court reporter asked the attorney  
21 to slow down.)

22 MR. ABRAMSON: Reason why we asked for Mr. Chang  
23 was because in response to your Honor's order on the  
24 statistics motion. The thought was we'd likely get those  
25 through a custodial file. If you still have a problem, come  
26 back and see me.

27 So, we said, well, let's add Mr. Chang so the  
28 likelihood of us getting those documents goes up

1 substantially. They pushed back on it. The other ones are  
2 related to marketing communications.

3 All we're asking for right now is a briefing  
4 schedule. The reason why we're raising this now is because  
5 of this delay and our concern about how long it's taking,  
6 that if we don't do it on a more expedited basis, then by  
7 the time we get an order it's going to be too late to get  
8 their documents and take depositions of these folks also.

9 MR. OOT: Your Honor, Mr. Abramson and I have been  
10 communicating about this set of custodians. What I did say  
11 to him is that this issue is likely not ripe yet because of  
12 the coordination with the MDL. That NDL discussion is still  
13 going on. June 6th, again, is the date that's going to  
14 really identify the custodian set for both cases. And Mr.  
15 Abramson is getting the benefit of that production through  
16 the coordination order.

17 So, what I asked him is that can we get through  
18 the MDL process, identify where we really do have the  
19 disagreements on the custodians so we're not double and  
20 maybe even triple briefing this. So, I think we've been  
21 working cooperatively up until now.

22 We understand his position on Frank Chang. We  
23 have a position on duplication with other custodians. I  
24 think we're working that through.

25 Another point. It's not just the MDL Plaintiffs.  
26 The JCCP Plaintiffs have a representation in the MDL as  
27 well. So, they're part of those discussions. The  
28 discussions are ongoing. If we have a disagreement, that

1 disagreement on custodians will be brought up with the MDL  
2 Court.

3 I think what we're asking is to let these  
4 negotiations for coordination for the benefit of all parties  
5 work out so then we could kind of move forward with the  
6 discovery.

7 THE COURT: What is the June 6th date in the MDL?  
8 Is that the date for Magistrate Judge Cisneros to rule? Is  
9 it the final deadline for the parties to complete their  
10 negotiations? What is it exactly?

11 MR. OOT: If there's a disagreement, your Honor,  
12 the Plaintiffs are to submit that agreement to whether it be  
13 probably Judge Cisneros under PTO8 in the MDL. So, those  
14 are fast ruled upon under the existing case management order  
15 so there wouldn't be a significant amount of delay in the  
16 MDL related to the negotiation of keyword search terms and  
17 custodians.

18 Again, those discussions are ongoing. All  
19 Plaintiffs in the JCCP and MDL are participating in those  
20 discussions. All I asked Mr. Abramson was we hold off on a  
21 briefing schedule while we negotiate the MDL.

22 So, that is the true benefit of the coordination  
23 order that we're about to enter, is that both sides get  
24 access from the MDL and the JCCP discovery. It alleviates  
25 the burden on Plaintiffs in both cases because they're using  
26 one vendor and cooperating on that expense.

27 MR. SHORTNACY: The parties are also scheduled to  
28 be before Judge Cisneros on June 11th. So, the idea is that

1 those issues would be discussed with the Court on that date  
2 as well, which is the June 6th date, as an agreement amongst  
3 the parties to try to perfect those issues and tee them up  
4 in advance of that case status conference on June 11th.

5 Just to give the Court some additional color.

6 MR. ABRAMSON: Well, at the risk of taking my own  
7 suggestion, let's see.

8 THE COURT: Let's see if great minds think alike.

9 MR. ABRAMSON: My suggestion would be this. I  
10 understand the custodians negotiation in the MDL is ongoing.  
11 I understand. I'm also quite certain, based on the fact  
12 that I'm in leadership on the MDL, that the idea there's not  
13 going to be disagreement on June 6th is far fetched.

14 There's going to be a disagreement. It's going to go to  
15 Judge Cisneros. She's going to make a ruling. I don't have  
16 her schedule.

17 I would propose let's set a briefing schedule, but  
18 make it so that Uber's brief and response is not due until  
19 after the time they believe Judge Cisneros will rule. Make  
20 it June 11th. We'll take the burden of filing a motion to  
21 compel. They don't have to do anything. We're going to  
22 file. And they won't have to respond to it until after they  
23 know whether we've reached a resolution.

24 That way, at least if this falls through, and it's  
25 still an issue, we're teed up and ready to go, and we don't  
26 have to wait another 30 days.

27 THE COURT: I was going to suggest a slightly  
28 different approach, which is that the motion not be filed



1 until after June 6th or June 11th. Because of the  
2 possibility of that, depending on the negotiations and the  
3 MDL, it may become unnecessary or moot, at least to some  
4 extent. June 6th is only three weeks away.

5 So long as Uber's response has a reasonable time  
6 after they have a ruling from Judge Cisneros and they can  
7 tell me, you know, no, now we don't have a dispute over six  
8 custodians, we only have a dispute over three, fine. That  
9 makes sense to me. I don't have a problem with that.

10 MR. ABRAMSON: My preference would be for us to do  
11 hopefully some unnecessary work so that in the event there's  
12 not a resolution, Uber's response deadline is very soon  
13 after the time at which Judge Cisneros would rule so we're  
14 not wasting any additional time.

15 MR. OOT: Your Honor, I would just propose to  
16 avoid the needless motion, it's still going to be effort on  
17 Defendants regardless of Mr. Abramson says he's going to  
18 take the burden, that the motion not be filed until June  
19 15th which would be after the issue is due to Judge  
20 Cisneros. And, likely, we may even have a ruling from her.  
21 And we can revisit the scheduling of Uber's response at that  
22 time.

23 THE COURT: I mean, if the Plaintiffs want to take  
24 on an unnecessary burden of filing an early motion which,  
25 frankly, I'm not going to read until I have an opposition,  
26 that's their lookout. You can file your motion anytime  
27 you're ready to file it, Mr. Abramson.

28 We'll set the opposition date after the expected

1 time of ruling by Judge Cisneros. It looks June 15th is a  
2 Saturday.

3 Do you want to set that for the 17th, Mr. Oot?

4 MR. OOT: With the caveat that we would hear from  
5 Judge Cisneros first and seek leave of the Court if we  
6 haven't received an order from Judge Cisneros.

7 THE COURT: That seems reasonable to me. In the  
8 interests of having some certainly, let's set a deadline  
9 now. You'll meet with her, and she'll tell you whether  
10 she's going to move quickly or not, presumably. You know,  
11 you can then come back to me or to the clerk by a joint  
12 communication by saying we think it makes more sense to  
13 extend this by a week or two or whatever it is. I'm happy  
14 to do that. Makes sense.

15 MR. ABRAMSON: Thank you, your Honor.

16 MR. OOT: Thank you, your Honor.

17 THE COURT: Do we pick a hearing date now?

18 MR. ABRAMSON: That would be good.

19 THE COURT: I'd like to see this get resolved  
20 sooner rather than later. What if we pick something as soon  
21 as before the July 4th holiday, let's say.

22 MR. ABRAMSON: That works for us. If they file  
23 their response by June 17th, we'll agree to turn it around  
24 by the 21st, if it's okay with your Honor. If it's possible  
25 to have a hearing some time the next week or that week  
26 before the fourth, that's good with us.

27 THE COURT: The 27th.

28 MR. SHORTNACY: Can I, at the risk of upsetting

1 the apple cart here, I understand the approach your Honor is  
2 suggesting, and I'm not disagreeable with it.

3 I wanted to raise one timing issue. If the  
4 purpose is to let the MDL discussion play out to tee  
5 something up to perfect it for Judge Cisneros and to appear  
6 before her on June 11th, discuss those issues, she may  
7 require additional briefing or not. We'll certainly have  
8 guidance from her on June 11th.

9 My fear is on the date that we just discussed of  
10 an opposition of some four business days later or something,  
11 it presupposes we will be working up an opposition in  
12 parallel with the discussions and with potential guidance  
13 from Judge Cisneros. So, it's a little bit off kilter from  
14 letting that process play out. I would just ask to push the  
15 time for the opposition out a little further so we don't  
16 find Uber taking on work that's undisputed after guidance  
17 from Judge Cisneros, for example.

18 I want to avoid generating that as well, even  
19 though Mr. Abramson is wanting to file the motion.

20 Does that make sense, your Honor, in terms of the  
21 timing?

22 THE COURT: How about this? The Plaintiffs can  
23 file their motion whenever they feel appropriate. Uber  
24 files opposition on the 21st of June. No reply hearing on  
25 the 27th. Everybody okay with that?

26 MR. ABRAMSON: That works for us.

27 MR. SHORTNACY: Your Honor, can we do the hearing  
28 over Zoom?

1 THE COURT: That's fine. June 27th at 11:00 a.m.  
2 Does that work for everybody?

3 The only other thing I would say is I would urge  
4 you all -- I'm sure you're having these discussions in the  
5 context of the MDL. As I recall from the prior motions, at  
6 least one of the issues that's likely to get raised by Uber,  
7 and presumably has already been raised by Uber, is whether a  
8 given custodian is likely to be duplicative of another  
9 custodian or another witness. I remember there were  
10 arguments about, well, gee, do you really need to look at  
11 the inbox of so-and-so who is a more senior person when the  
12 person who was really in charge of Issue X or Issue Y  
13 reported to that person, but you're really getting a  
14 superior witness and you're not missing anything if you talk  
15 to the person who had the primary responsibility for that.  
16 Somebody who is the regional VP for marketing for the  
17 Western Hemisphere, it's going to be a small part of their  
18 task to be overseeing marketing in the western United States  
19 or something to that effect. I would urge you to keep  
20 having those discussions. If there's a way to narrow down  
21 the dispute here from six to four to two or wherever you  
22 come out, based on a good faith representation by counsel,  
23 where if need be a brief declaration from somebody like that  
24 who says: Yeah, I would have been copied on this stuff, but  
25 I don't have anything that my subordinate wouldn't have.  
26 Just a way to see if you can see your way through all of  
27 this without fighting about everything.

28 MR. ABRAMSON: We will do that, your Honor. Thank

1 you.

2 THE COURT: We haven't set a deadline for the  
3 Plaintiffs' motion. I suppose we ought to do so just so we  
4 have something on paper. You want to do it by May 31, a  
5 couple of weeks from now?

6 MR. ABRAMSON: Sure, yeah. We can do it by then.

7 THE COURT: Okay, all right. Have we made at  
8 least some progress and accomplished what we can for the  
9 day?

10 MR. ABRAMSON: I think so.

11 MR. SHORTNACY: Your Honor, thank you very much  
12 for your time.

13 MS. RUBIN:

14 MS. PHILLIPS: Thank you, your Honor.

15 THE COURT: Thank you. Bye-bye.

16 (Whereupon, court proceedings adjourned.)  
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1 STATE OF CALIFORNIA )  
2 ) SS.  
3 COUNTY OF SANTA CLARA )  
4

5 I, AMY GOODING, CSR, HEREBY CERTIFY:

6 That I was the duly appointed, qualified shorthand  
7 reporter of said court in the above action taken on the  
8 above date; that I reported the same in machine shorthand  
9 and thereafter had the same transcribed through  
10 computer-aided transcription as herein appears; and that the  
11 foregoing pages contain a true and correct transcript of the  
12 proceedings had in said matter at said time and place to the  
13 best of my ability.

14 I further certify that I have complied with CCP  
15 237(a)(2) in that all personal juror identifying information  
16 has been redacted, if applicable.

17 DATED: May 17, 2024

18  
19   
20 Amy Gooding, CSR  
21 CSR Certificate No. 13386  
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